

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Inquiry Concerning the Deployment of )  
Advanced Telecommunications )  
Capability to All Americans in a )  
Reasonable and Timely Fashion, and )  
Possible Steps to Accelerate Such )  
Deployment Pursuant to Section 706 of )  
the Telecommunications Act of 1996 )

CC Docket No. 98-146

**Comments of the Public Utility Commission of Texas**

On August 10, 2001, the Federal Communications Commission (Commission) released the Third Notice of Inquiry (Third Inquiry) in this proceeding, seeking comment on various issues related to “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”<sup>1</sup> In addressing this question the Commission seeks comment and input regarding how the Commission and state commissions can encourage the deployment of advanced telecommunications capability. The Public Utility Commission of Texas (Texas PUC), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submits these Comments on the Third Inquiry.

The data released by the Commission reflecting deployment of advanced telecommunications capabilities as of December 31, 2000 continues to reveal steady subscriber growth, an encouraging sign. The Texas PUC as discussed in its comments to the Commission of March 21, 2001 continues to believe: (1) that data sharing with State

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<sup>1</sup> § 706(b) of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (FTA).

Commissions is of continued importance and, (2) most importantly, that the scope of broadband reporting should be expanded to ensure the true availability of advanced services to all Americans.<sup>2</sup>

### **Data Collection**

Specifically, the Commission seeks comment “on whether our current data collection overlooks certain underserved areas or customer classifications, or growth in areas we have not identified.” (§ 18). As noted in our previous comments, the threshold of 250 broadband customers before reporting is required “may have prevented collection of sufficient information on broadband service in rural and sparsely populated areas, given that many such areas are served by relatively small incumbent local telephone and cable television companies.”<sup>3</sup> While the Texas PUC appreciates the need to balance the administrative burdens placed on small rural ILECs and cable television companies, the true deployment picture to rural areas will remain unclear until more data is collected from providers to these areas.

### **Alternative Considerations**

The Commission also seeks comment on suggestions of additional or alternative criteria for determining whether advanced telecommunications capability “is being deployed to all Americans ‘in a reasonable and timely fashion.’” (§ 19). The Texas PUC would offer three comments:

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<sup>2</sup> *In the Matter of Local Competition and Broadband Reporting*, Comments of the Public Utility Commission of Texas, CC Docket No. 99-301 at 2 (March 21, 2001).

<sup>3</sup> *Id.* at 3.

- **The Availability or Location of Broadband Capable ISPs is Critical to the Deployment of Advanced Services:** The Texas PUC has learned in discussions with providers of advanced services that the cost of “middle-mile” transport to a broadband capable ISP is a significant, if not the principle, cost driver when determining whether deployment is economical to a rural area. For example, in the vast distances of Texas the mileage and capacity sensitive costs of “middle-mile” transport to an ATM capable switch may present cost-prohibitive hurdles to advanced services deployment to rural areas. As a result, the Texas PUC would recommend that the Commission add to its analysis criteria that address the availability of broadband capable ISPs and/or distance to these ISPs.
- **The Underlying Economics of the Network (e.g. Loop Length) May Provide More Useful Analysis of Where Deployment Can Occur:** The Texas PUC in a recent report to the Texas legislature noted that 50% of loops in Texas counties with populations of less than 100,000 were within 12,000 feet of a central office and 73% were within 18,000 feet.<sup>4</sup> (Attachment A). The Texas PUC believes this type of analysis of loop length is instructive as to where xDSL deployment can potentially occur.
- **The Impact of Two-Way Advanced Services Satellite Providers on the Deployment of Advanced Services:** The Texas PUC recognizes that the ubiquitous availability of two-way satellite dramatically impacts the deployment of advanced services to rural areas. However, installation and equipment costs and monthly

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<sup>4</sup> *Report to the 77<sup>th</sup> Texas Legislature on the Availability of Advanced Services in Rural and High Cost Areas*, Public Utility Commission of Texas at 61 (January 1, 2001) (Texas Advanced Services Report). <[http://www.puc.state.tx.us/telecomm/projects/21166/21166arc/rpt77leg\\_asarcost.doc](http://www.puc.state.tx.us/telecomm/projects/21166/21166arc/rpt77leg_asarcost.doc)>.

service charges coupled with the uncertain availability of qualified installation technicians may stifle its timely deployment in rural and underserved areas.

In Texas, Southwestern Bell Telephone Company has committed to introduce Pegasus Express two-way high-speed satellite Internet access “to customers in rural Texas, where Southwestern Bell Digital Subscriber Line (DSL) service is not available.”<sup>5</sup> Similarly, Big Bend Telephone Company acting as an agent for its customers will arrange for installation and provide twelve month zero interest equipment and installation financing to lessen the burden on customers of acquiring this service.<sup>6</sup> The Texas PUC believes knowledge of these business arrangements is important to determining the availability of advanced services in rural and underserved areas.

### **Distressed Providers**

The Commission also seeks “comment on whether customers of financially distressed providers still have access to high-speed and advanced services.” (§ 23). Texas has not been immune to distressed providers ceasing operation. The Texas PUC upon notification of a provider entering bankruptcy protection undertakes to assist and/or monitor the migration of customers to other providers. At present, the Texas PUC has participated in assisting in the transition of Northpoint and Rhythms Links customers to other providers of advanced services.

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<sup>5</sup> *SBC and Pegasus to Extend Broadband's Reach*, SBC Press Release (May 10, 2001) <[http://www.sbc.com/News\\_Center/1,3950,31,00.html?query+20010510-1](http://www.sbc.com/News_Center/1,3950,31,00.html?query+20010510-1)>.

<sup>6</sup> Letter to the Honorable Susan Combs, Texas Commissioner of Agriculture, from Bill Golden, President, Big Bend Telephone Company (July 19, 2001).

## State Efforts to Encourage Deployment

The Commission additionally seeks comment on techniques state commission efforts to encourage deployment pursuant to § 706(a) of the FTA. (¶ 26). In 1999, the 76<sup>th</sup> Texas Legislature enacted legislation to encourage the provision of advanced telecommunications services to rural areas of the state.<sup>7</sup> The Texas PUC is currently conducting a rulemaking proceeding<sup>8</sup> to implement this legislation. While the Texas PUC has yet to adopt a rule, discussions with parties in this proceeding have centered on establishing a competitive bid process that allows all advanced service providers to bid on a request from an individual rural community for service.

The Texas PUC in its Advanced Services Report to the Texas Legislature identified four public policy objectives for supporting advanced services deployment in rural Texas.<sup>9</sup> First, any public policy should encourage deployment without reference to a specific technology (i.e. technology neutrality).<sup>10</sup> Second, policy solutions should be creative, innovative, and simple, thereby avoiding excessive regulation. Third, public policy should encourage local solutions that are pro-competitive and pro-investment.<sup>11</sup> Fourth, one-size-fits-all policies are unlikely to achieve widespread success.<sup>12</sup>

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<sup>7</sup> See TEX. UTIL. CODE ANN. § 55.014 (Vernon Supp. 2001).

<sup>8</sup> *Rulemaking to Address the Provision of Advanced Services by Electing Companies, COA, or SPCOA Holders in Rural Service Areas*, Project No. 21175 (pending).

<sup>9</sup> *Texas Advanced Services Report* at 64-65 (Chapter 6 of the Report at Attachment B).

<sup>10</sup> See also *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Second Report, CC Docket No. 98-146 at ¶ 245 (rel. August 21, 2000) (*FCC's Second Advanced Services Report*).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at ¶ 248.

Additionally, the Texas PUC identified the following policy solutions that could potentially encourage the deployment of advanced services in rural areas of Texas:<sup>13</sup>

- Expand telecommunications facility inventory data collection activities.
- Encourage the use of demand aggregation and anchor tenancy.<sup>14</sup>
- Encourage the development of community networks.<sup>15</sup>
- Provide community Internet access and training to “at risk” populations.
- Use economic development funds for rural telecommunications infrastructure investment.
- Provide tax incentives for companies deploying advanced services to rural areas.
- Deploy fiber optic cables in the state’s rights of way.
- Allow private access in limited situations to the TEX-AN 2000 telecommunications infrastructure and services.
- Provide a narrow exception to Texas law for rural municipal governments to provide advanced services.
- Enhance statewide telecommunications strategic planning.<sup>16</sup>

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<sup>13</sup> *Texas Advanced Services Report* at 65-70.

<sup>14</sup> *FCC’s Second Advanced Services Report* at ¶ 245.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

## **Conclusion**

We appreciate the opportunity to offer our comments in this proceeding. We invite the Commission to build on the studies and analysis done by the Texas PUC and other state regulatory agencies as we attempt to encourage the deployment advanced telecommunications to all Americans in a reasonable and timely fashion.

**Respectfully submitted,**

**Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 7711-3326**

**September 24, 2001**

**/original signed/**

**Max Yzaguirre  
Chairman**

**/original signed/**

**Brett A. Perlman  
Commissioner**

**/original signed/**

**Rebecca Klein  
Commissioner**

	<b>&lt; 12 kft from CO</b>	<b>12 to 18 kft from CO</b>	<b>&gt; 18 kft from CO</b>
<b>Counties with Population &lt;5000</b>	50,000 59%	19,500 23%	15,000 18%
<b>Counties with Population &gt;5000, &lt;20000</b>	383,000 61%	109,000 17%	133,000 21%
<b>Counties with Population &gt;20000, &lt;100000</b>	907,000 46%	487,000 25%	589,000 30%
<b>Total</b>	1,340,000 50%	615,500 23%	737,000 27%

Source: 1999 Texas Carrier Data.